

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Lane Chesley, Assembly member *lc*

DATE: January 26, 2023

SUBJECT: **Chesley Amendment #1** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

[Please note the bold underlined language is new and the strikeout language in brackets is to be deleted.]

➤ Amend KPB 21.29.010, as follows:

21.29.010. Applicability—Prohibitions.

- A. This chapter applies to all private and public lands in the borough except where the use is prohibited by ordinance within a local option zoning district or exempt under KPB 21.29.015.
- B. This chapter does not apply within the incorporated cities of the Kenai Peninsula Borough.
- C. Earth material extraction within 300 linear feet from riparian wetlands and the seasonal high-water level of naturally occurring open water bodies, such as a lake, pond, river, stream, or ocean, is prohibited. This prohibition does not apply to man-made water bodies or isolated ponds of less than one acre on private property.
- D. **Earth materials excavation, extraction, hauling, conditioning or processing, within 1,000 feet of the main entrance to a public campground is prohibited from the last Monday of May through the first Monday of September each year. The distance will be measured from the entrance of the public campground to the outer boundary of a parcel for which an applicant has requested a counter permit or conditional land use permit under this chapter.**

~~[D.]~~ E. All operations must be conducted in accordance with the current publication of the State of Alaska, Alaska DEC User's Manual Best Management Practices for Gravel/Rock Aggregate Extraction Projects. In the event a provision of this chapter conflicts with the State of Alaska's manual, this chapter controls.

~~[E.]~~ F. Up to 5,000 gallons of water per day may be withdrawn from a well. Proof of an ADNR use authorization is required for withdrawal of water in excess of 5,000 gallons per day from a well, as long as there is no open pond with active excavation. Open water is allowed only with an approved settling pond per KPB 21.29.055 or in conjunction with a CLUP approved pursuant to KPB 21.29.057 (earth materials extraction within the water table CLUP).

Your consideration is appreciated.

Kenai Peninsula Borough
Assembly

MEMORANDUM

TO: Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Lane Chesley, Assembly member *lc*

DATE: January 26, 2023

SUBJECT: **Chesley Amendment #2** Amending Ordinance 2022-36, Amending
KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land
Use Permits and Material Site Permits, Updating Notice, Applicability,
Permit Types, Application Requirements, Standards and Permits
Conditions (Johnson, Chesley)

[Please note the bold underlined language is new and the strikeout language in brackets is to be deleted.]

➤ Amend KPB 21.29.015(A), as follows:

21.29.015. Material extraction exempt from obtaining a permit.

- A. Material extraction **limited to one acre per parcel** [~~which disturbs an area of less than one acre~~] that is not in a mapped flood plain or subject to 21.29.010(B) [~~does not enter the water table, and does not cross property boundaries,~~] does not require a permit. **There will be no excavation within 20 feet of a public right-of-way or within 10 feet of a lot line.** An owner or operator exempt under this subsection must register with the borough on a form provided by the planning department and must comply with KPB 21.29.010(C). **Material extraction within four feet of seasonal high-water table and all material crushing or screening activities is prohibited under this exemption.**

Your consideration is appreciated.

Kenai Peninsula Borough
Assembly

MEMORANDUM

TO: Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Lane Chesley, Assembly member ^K

DATE: January 26, 2023

SUBJECT: **Chesley Amendment #3** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

[Please note the bold underlined language is new and the strikeout language in brackets is to be deleted.]

➤ Amend KPB 21.29.020(A), as follows:

21.29.020. Types of permits available.

A. Counter permit. A counter permit is required for earth material extraction which disturbs more than one acre and less than 5 cumulative unreclaimed acres and is limited to one counter permit per parcel. Material processing, screening, or crushing, and material extraction within four feet of the seasonal high-water table is prohibited under a counter permit. A counter permit is valid for a period of two years. Upon request from the applicant, the planning director, or designee, may grant one 12-month extension on a counter permit. Counter permits are approved by the planning director, or designees, and are not subject to notice requirements under KPB 21.25.060. The planning director's decision to approve or deny a counter permit may be appealed to the planning commission, which must act as the hearing officer, in accordance with KPB 21.20.

Your consideration is appreciated.

Kenai Peninsula Borough
Assembly

MEMORANDUM

TO: Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Lane Chesley, Assembly member *LC*

DATE: January 26, 2023

SUBJECT: **Chesley Amendment #4** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

[Please note the bold underlined language is new and the strikethrough language in brackets is to be deleted.]

➤ Amend KPB 21.29.010, as follows:

21.29.065. Effect of permit denial.

- A. **Absent new evidence or a material change in circumstances that even with due diligence the applicant could not have presented with the original application, [N] no reapplication concerning the same counter permit application may be filed within one calendar year of the date of the planning director's final denial action. [except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.]**
- B. **Absent new evidence or a material change in circumstances that even with due diligence the applicant could not have presented with the original application, [N] no reapplication concerning the same CLUP may be filed within [one] five calendar years of the date of the final denial action. [except in the case where new evidence or circumstances exist that were not available or present when the original application was filed.]**
- C. **For the purposes of this section, the applicant bears the burden of proof of demonstrating that new evidence or a material change of**

circumstances exist and that ~~[they were not available or present,]~~
even with due diligence the applicant could not have presented the
information with the original application. ~~[was filed.]~~

Your consideration is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Lane Chesley, Assembly member *lc*

DATE: January 26, 2023

SUBJECT: **Chesley Amendment #5** Amending Ordinance 2022-36, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

[Please note the bold underlined language is new and the strikethrough language in brackets is to be deleted.]

➤ Amend KPB 21.29.130, as follows:

21.29.130. Definitions.

A. Unless the context requires otherwise, the following definitions apply to material site permits and activities:

1. Abandon means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.
2. Aggrieved Party means a party of record adversely impacted by the decision of the hearing officer who participated before the hearing officer either by written or oral presentation.
3. Aquifer means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.

4. Aquifer-confining layer means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.
5. **Camp or camping means to use a vehicle, tent, or shelter, or to arrange bedding, or both, with the intent to stay overnight.**
6. **Campsite means any space designated for camping within a public campground.**
- ~~[5.]~~ 7. Commercial means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.
- ~~[6.]~~ 8. Conditioning or processing material means a value-added process including batch plants, asphalt plants, screening, blasting, washing, and crushing by use of machinery. It does not include stripping and segregation with excavation equipment.
- ~~[7.]~~ 9. Exhausted means that all material of a commercial quality in a sand, gravel, or material site has been removed.
- ~~[8.]~~ 10. Groundwater means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.
- ~~[9.]~~ 11. Person shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.
12. **Public campground means an area, developed and maintained by a public entity, that is open to the public and contains one or more campsites.**
- ~~[10.]~~ 13. Quarter or Quarterly means January through March, April through June, July through September, or October through December;
- ~~[11.]~~ 14. Sand, gravel or material site means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.
- ~~[12.]~~ 15. Seasonal high groundwater table means the highest level to which the groundwater rises on an annual basis.
- ~~[13.]~~ 16. Stable condition means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.
- ~~[14.]~~ 17. Surface water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

~~[15.]~~ **18.** Topsoil means material suitable for vegetative growth.

~~[16.]~~ **19.** Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.

~~[17.]~~ **20.** Water source means a well, spring or other similar source that provides water for human consumptive use.

Your consideration is appreciated.